

the testimony in the deposition, shall be paid by the party at whose instance the deposition is taken.

(k) *Subpoenas*. No subpoena can issue, to compel attendance, testimony, or production of documentary evidence, at an examination under this rule 9.

(l) *Agreement of parties*. In any case, any transcript or recording of any deposition, or any part of such a transcript or recording, may be made a part of the record as evidence by agreement of the parties other than a party failing to file an answer as required in these rules.

[43 FR 30510, July 14, 1978, as amended at 55 FR 41184, Oct. 10, 1990; 60 FR 8465, Feb. 14, 1995]

§ 202.110 Rule 10: Prehearing conference.

(a) The presiding officer, at any time prior to the commencement of the hearing, may request the parties or their counsel to appear at a conference before the presiding officer to consider:

- (1) The simplification of issues;
- (2) The necessity of amendments to pleadings;
- (3) The possibility of obtaining stipulations of fact and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;
- (4) The limitation of the number of expert or other witnesses;
- (5) The negotiation, compromise, or settlement of issues;
- (6) The exchange of copies of proposed exhibits;
- (7) The identification of documents or matters of which official notice may be requested;
- (8) A schedule to be followed by the parties for completion of the actions decided at the conference; or
- (9) Such other matters as may expedite and aid in the disposition of the proceeding.

No transcript or recording of such a conference shall be made, but the presiding officer shall prepare and file for the record a written summary if any action is taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference.

(b) *Manner of the prehearing conference*. (1) The prehearing conference shall be conducted by telephone or correspondence unless the presiding officer determines that conducting the prehearing conference by audio-visual telecommunication:

- (i) Is necessary to prevent prejudice to a party;
- (ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or
- (iii) Would cost less than conducting the prehearing conference by telephone or correspondence. If the presiding officer determines that a prehearing conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the prehearing conference, the prehearing conference shall be conducted by personal attendance of any individual who is expected to participate in the prehearing conference, by telephone, or by correspondence.

(2) If the prehearing conference is not conducted by telephone or correspondence, the prehearing conference shall be conducted by audio-visual telecommunication unless the presiding officer determines that conducting the prehearing conference by personal attendance of any individual who is expected to participate in the prehearing conference:

- (i) Is necessary to prevent prejudice to a party;
- (ii) Is necessary because of a disability of any individual expected to participate in the prehearing conference; or
- (iii) Would cost less than conducting the prehearing conference by audio-visual telecommunication.

[43 FR 30510, July 14, 1978, as amended at 60 FR 8466, Feb. 14, 1995]

§ 202.111 Rule 11: Hearing, oral or written.

(a) *When held*. A hearing, oral or written, shall be held unless:

- (1) Each respondent admits or is deemed to admit sufficient allegations of the complaint to support the full amount claimed by the complainant as reparation;